



# The Attorney General of Texas

April 9, 1980

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Honorable W. O. Shultz, II  
Associate General Counsel  
The University of Texas System  
Austin, Texas 78701

Open Records Decision No. 239

Re: Whether a college president's  
recommendation regarding tenure  
for individual professors is public.

Dear Mr. Shultz:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether a college president's recommendations to the Board of Regents regarding faculty tenure are available to the public. The President of the University of Texas at Austin requested the deans of the various colleges to evaluate the status of certain faculty members for the 1980-81 school year, including recommendations with respect to tenure, promotion and termination. After reviewing these evaluations, the President informed the various deans of the recommendations which he will make to the Board of Regents regarding these matters. The final decision will be made by the Regents. You suggest that such information is excepted from disclosure under section 3(a)(11) of the Open Records Act, which excepts "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than one in litigation with the agency."

In Attorney General Opinion H-436 (1974), this office promulgated the basic standard for determining whether information is excepted by section 3(a)(11). The opinion held that the section is

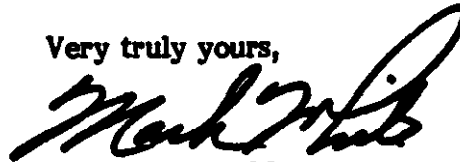
designed to protect from disclosure advice and opinion on policy matters and to encourage open and frank discussion between subordinate and chief concerning administrative action.

Disclosure was held not to be required "to the extent that portions of [a] document consist of advice and recommendations." Subsequent decisions of this office have followed this view. See, e.g., Open Records Decision Nos. 174 (1977); 128 (1976); 86 (1975).

Unlike some intra-agency reports, the recommendations at issue here consist of nothing more than the name of the individual, his department, his

present status, and the recommended action. As in Open Records Decision No. 174 (1977), we believe that the "factual information contained in [the reports] is incidental to and so intertwined with the evaluations and recommendations that we do not believe it is reasonably severable." It is thus our decision that a college president's recommendations to the Board of Regents regarding faculty tenure are excepted from disclosure by section 3(a)(11) of the Open Records Act. Of course, if the University determines that release of these records would not inhibit the free exchange of information between the President and Regents, it may and should release the information.

Very truly yours,



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